

### **Estate Tax Repeal - How did we get here?**

When the Economic Growth and Tax Relief Reconciliation Act passed in 2001, nobody thought it would still be in force nine years later, yet as it was neither made permanent nor replaced, it remains in place today. The act repeals the federal estate tax for 2010, but only for one year. In addition, the automatic step-up of the income tax basis of a decedent's assets will not occur in 2010, but will instead be subject to basis allocation rules allowable only in particular situations. Left unchanged, the entire act will "sunset" in 2011, and tax rates, credit exemptions and basis step-ups will return to 2000's levels.

Last December, the House of Representatives sought to replace this law with their passing of the Permanent Estate Tax Relief for Families, Farmers and Small Business Act of 2009, which would make permanent the \$3.5 million and \$7 million level exemptions for individuals and couples, respectively, and would impose a 45% maximum rate. Yet because this bill has not yet been approved by the Senate, we are presently left in limbo with no federal estate tax in force. Most professionals assume that the Senate will pass a bill sometime in 2010 that will set tax rates and exemption levels and apply them retroactively to January 1, 2010.

### **What you should do now:**

- Review your wills and trusts. Many individuals have their estate documents drafted with formula clauses that refer to estate or Generation-Skipping Transfer (GST) exemptions; this practice has been common in recent years in order to provide flexibility as the estate exemption amounts changed. However, in the current situation of no federal estate tax, use of these formulas could result in individuals unintentionally disinheriting spouses, children or grandchildren.
- Understand the details of your situation. Be aware that beneficiary designations and the titling of assets will dictate the passing of many of your assets. It is important for you to know which assets will ultimately be subject to the wording of your will/trust documents and which will not.
- Maintain good records. The "modified carryover basis" on inherited assets could prove to be a major headache for both executors and beneficiaries. Maintaining accurate cost basis information for your assets will allow appropriate decisions to be made regarding gifting decisions during your lifetime as well as allocating basis step-up provisions following your death.
- Flexibility is important. Until estate tax legislation becomes law, it is anyone's guess what the specific provisions will be. Because of this uncertainty, it is important that your documents be as flexible as possible with regard to formula clauses, disclaimers, powers of appointment and other items.

### **Financial Planning:**

Your wills and trusts play an important role in your financial plan, and they affect decisions about everything from the titling of your assets to how much insurance you should own. Now is an appropriate time to work with your financial advisor or estate planning attorney to review what your estate plan looks like today in light of the current estate tax situation. Such a discussion will give you a better understanding if adequate flexibility exists in your documents today, or if interim changes should be made to ensure assets would pass in the manner you intend should an untimely death occur.

Regards,  
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